

REMARKS

Claims 1-40 are currently pending in the subject application and are presently under consideration. Claim 1 has been amended as shown on p. 2 of the Reply. A current listing of the claims is shown at pp. 2-7 of the Reply.

Favorable reconsideration of the subject patent application is respectfully requested in view of the comments and amendments herein.

I. Objection of Claim 1

Claim 1 is objected to because of the following informalities: Claim 1 recites "...client is in and offline mode" rather than "...client is in online and offline mode..." It is respectfully requested that this objection be withdrawn for the following reasons. Claim 1 has been amended to cure a minor grammatical error. Therefore, this objection should be withdrawn.

II. Rejection of Claims 18 and 21-27 Under 35 U.S.C. §101

Claims 18 and 21-27 stand rejected under 35 U.S.C. §101 because the claimed invention is directed to non-statutory subject matter. In the subject Office Action, the Examiner argues that claims 18 and 21-27 recite "computer-readable medium", defined to include communication media, which do not fall within one of the four statutory classes of 35 U.S.C. §101, and hence the claims are non-statutory. Withdrawal of this rejection is requested for at least the following reasons:

According to *AT&T Corp. v. Excel Communications, Inc.*, 172 F.3d 1352 (Fed. Cir. 1999), the legal standard set forth by the Federal circuit for determining whether claims are directed towards statutory subject matter is whether the claims can be applied in a practical application to produce a useful, concrete and tangible result. In *AT&T*, the patent at issue described a message record for long-distance telephone calls that included a primary interexchange carrier ("PIC") indicator, which allowed for differential billing treatment for subscribers. (See *AT&T*, 172 F.3d at 1353). AT&T's claimed process applied Boolean algebra "to determine the value of the PIC indicator, and [applied] that value through switching and recording mechanisms to create a signal useful for billing purposes." (See *AT&T*, 172 F.3d at 1358). Relying on its holdings in *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, 149 F.3d 1368 (Fed. Cir. 1998), *cert. denied*, 525 US 1093 (1999) and *Arrhythmia Research*

Tech. Inc. v. Corazonix Corp., 958 F.2d 1053 (Fed. Cir. 1992), the Court held that the AT&T process was patentable subject matter:

In *State Street*, we held that the processing system there was patentable subject matter because the system takes data representing discrete dollar amounts through a series of mathematical calculations to determine a final share price – **a useful, concrete, and tangible result**. See 149 F.3d at 1373, 47 USPQ2d at 1601. In this case, Excel argues, correctly, that the PIC indicator value is derived using a simple mathematical principle (p and q). But that is not determinative because AT&T does not claim the Boolean principle as such or attempt to forestall its use in any other application. It is clear from the written description of the '184 patent that AT&T is only claiming a process that uses the Boolean principle in order to determine the value of the PIC indicator. The PIC indicator represents **information** about the call recipient's PIC, **a useful, non-abstract result** that facilitates differential billing of long-distance calls made by an IXC's subscriber. Because the claimed process applies the Boolean principle to produce a **useful, concrete, tangible result** without pre-empting other uses of the mathematical principle, on its face the claimed process comfortably falls within the scope of Section 101. See *Arrhythmia Research Tech. Inc. v. Corazonix Corp.*, 958 F.2d 1053, 1060, 22 USPQ2d 1033, 1039 (Fed. Cir. 1992) ("That the product is numerical is not a criterion of whether the claim is directed to statutory subject matter."). See *AT&T*, 172 F.3d at 1358 (emphasis added)..

Applicants' claimed invention relates generally to software version control systems, and more specifically, to the control of source code when working offline. For example, the claimed invention provides for an improved source code control architecture, which allows users and/or developers to modify source code files while offline, track activities associated with the modification, and transmit the activities during an update process when moved into online mode. In particular, independent claim 1 (and similarly independent claim 21), recites "a system that facilitates source code control, comprising of a client control component...that tracks an activity associated with a modification of a source code file...transmits the activity during an update process..." In other words, the claimed invention provides for a system to produce a **useful, concrete, tangible result** of controlling, modifying, and tracking of the source code in a software version control systems.

Furthermore, In *Arrhythmia*, electrocardiograph signals were input into a computer and filtered and analyzed to determine the average magnitude of the signals. The resulting output

signal was then compared to a predetermined level to determine whether the patient was at high risk for a particular arrhythmia. The Court found the claims patentable subject matter stating:

The resultant output is not an abstract number, but is a **signal** related to the patient's heart activity. These claimed steps of "converting", "applying", "determining", and "comparing" are physical process steps that transform one **physical, electrical signal** into another. ***The view that "there is nothing necessarily physical about 'signals' " is incorrect. In re Taner***, 681 F.2d 787, 790, 214 USPQ 678, 681 (CCPA 1982) (holding statutory claims to a method of seismic exploration including the mathematically described steps of "summing" and "simulating from"). . . . The computer-performed operations transform a particular input **signal** to a different output **signal**, in accordance with the internal structure of the computer as configured by electronic instructions. "The claimed invention . . . converts one **physical thing** into another **physical thing** just as any other electrical circuitry would do". *Arrhythmia*, 958 F.2d at 1059, 1060 (citations omitted) (emphasis added).

In *State Street*, the Federal Circuit remarked upon its decision in *Arrhythmia* and noted that the transformation of electrocardiographic signals was patentable as "a practical application of an abstract idea . . . because it corresponded to a useful, concrete or tangible thing – the condition of a patient's heart." (*State Street*, 149 F.3d at 1373). The Federal Circuit also remarked in *State Street* that:

We note that, for the purposes of a Section 101 analysis, it is of little relevance whether [a claim] is directed to a "machine" or a "process," as long as it falls within at least one of the four enumerated categories of patentable subject matter *State Street*, 149, F.3d at 1373.

As noted *supra*, the Federal Circuit case law supports that carrier waves/signals fall within at least one of the four enumerated categories of patentable subject matter. The Federal Circuit has made clear that signals are physical things, (*See Arrhythmia*, 958 F.2d at 1059, 1060), and as such carrier signals/waves are not naturally occurring phenomena, but rather, manufactured signals which accordingly are patentable products of manufacture in and of themselves. Thus, as discussed in the specification, communication media such as carrier waves/signals are physical things and are useful and fall within the ambit of being classified as computer readable media. Consequently, the subject claim clearly meets the aforementioned

legal standards set forth in *AT&T Corp. v. Excel Communications, Inc.*, *State Street Bank & Trust Co. v. Signature Fin. Group, Inc.*, and *Arrhythmia Research Tech. Inc. v. Corazonix Corp.*

In view of the aforementioned arguments, this rejection should be withdrawn with respect to claims 18, and 21-27.

III. Rejection of Claims 1-9, 11-23 and 25-40 Under 35 U.S.C. §102(e)

Claims 1-4, 7, 12-31 and 34-48 stand rejected under 35 U.S.C. §102(e) as being anticipated by Lin *et al.* (2005/0091226A1). It is respectfully requested that this rejection be withdrawn for at least the following reason. Lin *et al.* does not teach or suggest each and every limitation as recited in the subject claims.

A single prior art reference anticipates a patent claim only if it expressly or inherently describes each and every limitation set forth in the patent claim. *Trintec Industries, Inc. v. Top-U.S.A. Corp.*, 295 F.3d 1292, 63 USPQ2d 1597 (Fed. Cir. 2002); *See Verdegaaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). The identical invention must be shown in as complete detail as is contained in the ... claim. *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Independent claim 1 recites *a system that facilitates source code control, comprising a client control component of a client that tracks an activity associated with a modification of a source code file when the client is in an offline mode, and transmits the activity during an update process when the client moves to an online mode.* Independent claims 13, 21, 28, 34, and 38 recite similar features. Lin *et al.* fails to disclose or suggest each and every element of the claimed subject matter.

Lin *et al.* merely relates to a client side caching (CSC) infrastructure that facilitates seamless operation across connectivity states (e.g., online-offline) between client and remote server. To this end, Lin *et al.* discloses a caching architecture to safeguard a user (e.g., client) and/or client applications across connectivity interruptions. Lin *et al.* discloses that this can be achieved by caching desirable file(s) together with appropriate protocol information to a local (e.g., client) data store. In other words, Lin *et al.* merely provides for an improved CSC infrastructure that stores frequently used information on the clients' machine, allowing the client

to quickly access a file that would have normally been accessed from a server. On the other hand, the claimed invention provides for an improved source code control architecture, which allows users and/or developers to modify source code files while offline, track activities associated with the modification, and transmit the activities during an update process when moved into online mode. Lin *et al.* fails to teach or suggest such aspects of the applicants' claimed invention.

In the subject Office Action, the Examiner argues that Lin *et al.* discloses "a source code control (e.g., FIG.1 and related text)...a client component ...that tracks activity associated with a modification of a source code file when the client is in offline mode (paragraph [0007])." Applicants' representative respectfully disagrees. At the indicated passage, Lin *et al.* merely discloses a client side caching architecture for communication between one or more clients and a network. Lin *et al.* discloses that the client application makes data requests using paths into a kernel portion of a remote file system. Lin *et al.* further discloses that if the remote server is not online, the client side caching component directs the file request to a local cache on the client. Nowhere does Lin *et al.* teach or suggest **source code control**, wherein users can **modify the source code files** while offline. Lin *et al.* merely discloses that the data requests to be sent to the local cache while the client is offline. Furthermore, Lin *et al.* is silent about a client that **tracks activities** associated with the **modification of a source code file** when the client is **in offline mode**, and **transmits the activities** during an update process when moved into **online mode**. For example, the claimed invention provides for a repository that tracks the state information, which includes whether the file is checked out from the server, checked back in to the server, and locked on the server. Lin *et al.* is silent about any such tracking activities.

Based on at least the foregoing, it is readily apparent that Lin *et al.* fails to anticipate each and every element of the claimed subject matter as recited in independent claims 1, 13, 21, 28, 34, and 38 (and claims which depend there from). Therefore, this rejection should be withdrawn.

IV. Rejection of Claims 10 and 24 Under 35 U.S.C. §103(a)

Claims 10 and 24 stand rejected under 35 U.S.C. §103(a) as being unpatentable over Lin *et al.* (2005/0091226) in view of Leherbauer (2003/0033590). It is respectfully requested that the rejection should be withdrawn for at least the following reason. Lin *et al.* and Leherbauer, individually or in combination, do not teach or suggest each and every element set forth in the

subject claim.

To reject claims in an application under §103, an examiner must establish a *prima facie* case of obviousness. A *prima facie* case of obviousness is established by a showing of three basic criteria. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. See MPEP §706.02(j). The teaching or suggestion to make the claimed combination and the reasonable expectation of success must both be found in the prior art and not based on applicant's disclosure. See *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991).

Leherbauer does not make up for the aforementioned deficiencies of Lin *et al.* with respect to independent claim 1 and 21 (which claims 10 and 24 depend there from). Therefore, the claimed invention as recited in claims 10 and 24 is not obvious over the combination of Lin *et al.* and Leherbauer. Thus, it is respectfully submitted that this rejection be withdrawn.

CONCLUSION

The present application is believed to be in condition for allowance in view of the above comments and amendments. A prompt action to such end is earnestly solicited.

In the event any fees are due in connection with this document, the Commissioner is authorized to charge those fees to Deposit Account No. 50-1063 [MSFTP640US].

Should the Examiner believe a telephone interview would be helpful to expedite favorable prosecution, the Examiner is invited to contact applicants' undersigned representative at the telephone number below.

Respectfully submitted,

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